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Compucom Systems, Inc. and Communication Workers of America, Local 1032. Case 22–CA–28969

September 30, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on June 19, 2009, the General Counsel issued the complaint on July 24, 2009, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 22–RC–12925. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Sections 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On August 12, 2009, the General Counsel filed a Motion for Summary Judgment. On August 14, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment¹

The Respondent admits its refusal to bargain in its answer and response to the Board’s Notice to Show Cause, but contests the validity of the Union’s certification on

the basis of the Board’s resolution of the five challenged ballots in the representation proceeding.²

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.³

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with offices and places of business in East Hanover, New Jersey, Florham Park, New Jersey, and Suffern, New York, has been engaged in the business of contract computer support services.⁴

About August 20, 2008, the Respondent purchased the business of Getronics USA, Inc. (Getronics). Since then,

² The Respondent also contests the validity of the Union’s certification on the basis that the Board lacked statutory authority to act with two members on April 27, 2009, when it issued the Decision and Certification of Representative in the underlying representation case. However, this defense is without merit for the reasons stated in fn. 1.

³ Thus, we deny the Respondent’s request that the complaint be dismissed in its entirety.

⁴ In its answer to the complaint, the Respondent denies that it is a Massachusetts corporation, as alleged in the complaint, asserting instead that it is a Delaware corporation. We find it unnecessary to resolve this issue because the Respondent admits it is a corporation. In addition, it appears that there is an inadvertent error in both the complaint and the Respondent’s answer. The complaint alleges at par. 2, and the Respondent admits in par. 2 of its answer, that the Respondent conducts business in “East Hanover, Florham Park and Suffern, New Jersey.” However, the complaint also alleges at par. 8, and the Respondent admits in par. 8 of its answer, that the appropriate unit is “all full-time and regular part-time Technical Support Specialists, Network Engineers, Logistics Coordinators and Help Desk Analyst employees, employed by the Respondent at its Florham Park, East Hanover, New Jersey, and Suffern, New York facilities . . .” (Emphasis added.) The locations of the Respondent’s facilities set forth in the unit description above are consistent with the locations of the Respondent’s facilities as described in the recommended Decision on Objections and Challenges issued by the administrative law judge as well as in the Decision and Certification of Representative unit description issued by the Board on April 27, 2009. Further, the location of its Suffern facility was not disputed by the Respondent in the underlying representation proceedings. Accordingly, it appears that the reference to “Suffern, New Jersey” in par. 2 of the complaint was a typographical error, which was reflected in the Respondent’s answer to that paragraph. Therefore, we shall refer to the locations of the Respondent’s facilities as they are set forth in the representation proceedings and in the unit description.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board’s powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed ___ U.S.L.W. ___ (U.S. September 11, 2009) (No. 09–328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08–1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09–213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed sub nom. *NLRB v. Laurel Baye Healthcare of Lake Lanier, Inc.*, ___ U.S.L.W. ___ (U.S. September 29, 2009) (No. 09–377).

it has continued to operate the business of Getronics in basically unchanged form and has employed as a majority of its employees, individuals who were previously employees of Getronics.

Based on the operations described above, the Respondent has continued the employing entity and is a successor to Getronics.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its New Jersey facilities goods valued in excess of \$50,000 directly from points outside of the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union, Communication Workers of America, Local 1032, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the representation election held on June 27, 2008, in Case 22–RC–12925, the Union was certified on April 27, 2009, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Technical Support Specialists, Network Engineers, Logistics Coordinators and Help Desk Analyst employees, employed by the Respondent at its Florham Park, New Jersey, East Hanover, New Jersey, and Suffern, New York facilities, but excluding all office clerical employees, Business Analyst, Project IC Managers, guards, and supervisors as defined in the Act.

Since April 27, 2009, the Union has been the exclusive collective-bargaining representative of the unit employees based on Section 9(a) of the Act.

B. *Refusal to Bargain*

By letters to the Respondent dated May 19 and June 9, 2009, the Union requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit and provide information for that purpose. By letter dated June 15, 2009, the Respondent refused to bargain with the Union.⁵

Since about April 27, 2009, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the

unit.⁶ We find that the failure to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit violates Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about April 27, 2009, to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); and *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, CompuCom Systems, Inc., East Hanover and Florham Park, New Jersey, and Suffern, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Communication Workers of America, Local 1032, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment, and, if an understanding is reached, embody the understanding in a signed agreement:

⁵ Although the complaint does not refer to the Union's May 19 and June 9, 2009 letters to the Respondent requesting bargaining, or to the Respondent's June 15, 2009 letter refusing to bargain, they are attached to the General Counsel's memorandum in support of the Motion for Summary Judgment as Exhs. H, I, and J, respectively.

⁶ The complaint alleges, and the Respondent's answer admits, that the Respondent has refused to bargain with the Union since the date of the Union's certification.

All full-time and regular part-time Technical Support Specialists, Network Engineers, Logistics Coordinators and Help Desk Analyst employees, employed by the Respondent at its Florham Park, New Jersey, East Hanover, New Jersey, and Suffern, New York facilities, but excluding all office clerical employees, Business Analyst, Project IC Managers, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facilities in East Hanover and Florham Park, New Jersey, and Suffern, New York, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 27, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Communications Workers of America, Local 1032, as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time Technical Support Specialists, Network Engineers, Logistics Coordinators and Help Desk Analyst employees, employed by us at our Florham Park, New Jersey, East Hanover, New Jersey, and Suffern, New York facilities, but excluding all office clerical employees, Business Analyst, Project IC Managers, guards, and supervisors as defined in the Act.

COMPUCOM SYSTEMS, INC.

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."